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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/043,004 | 01/08/2002 | Keith Forneck | 72846 | 7400 |

22242 7590 01/06/2004

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| EXAMINER |
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TRAN LIEN, THUY

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| ART UNIT | PAPER NUMBER |
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1761

DATE MAILED: 01/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/043,004

Applicant(s)

FORNECK ET AL.

Examiner

Lien T Tran

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s), _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Claims 1-14 and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Durst in view of Kuechle et al, Atwell and Rudel for the same reason set forth in the previous office action.

Claims 15-22 and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Durst in view of Rudel, Kuechle et al, Atwell, Snyder and Rozzano for the same reason set forth in the previous office action.

In the response filed Oct. 16, 2003, applicant argues none of the other references cited can be properly combined with Durst because both Kuechle and Atwell disclose bread dough compositions, not fully baked bread; thus, the references do not teach or suggest that corn syrup or corn syrup and glycerine could extend the shelf life of fully baked bread. This argument is not persuasive. The prior art teaches to add corn syrup or a combination of corn syrup and glycerine for specific reason. Rudel teaches to add corn syrup as sweetening agent. Kuechle et al teach to add corn syrup as a humectant; they also teach corn syrup can be used in combination with other humectant such as glycerin. While Rudel and Kuechle et al teach to add the ingredients to doughs; such doughs are baked to make fully baked product. Thus, whatever result obtained in the dough will also be obtained in the final baked product. The claimed product is also made from a dough. Durst teaches to make baked product in which humectant is added to control the water activity to obtain the desired shelf stability; he teaches to use glycerin or preferably glycerin mixed with propylene glycol. Kuechle et al show glycerin, propylene glycol and corn syrup all function as a humectant. Thus, it would have been obvious to one skilled in the art to use an alternative ingredient which

provides the same function. It would have been obvious to one skilled in the art to use glycerin in combination with corn syrup to obtain the desired water activity because corn syrup is also a humectant. Durst also teaches to add a sweetening agent to the baked product. Rudel teaches using corn syrup as the sweetening agent. Thus, it would also have been obvious to add corn syrup as the sweetening agent. Applicant argues Rudel does not teach adding corn syrup for any other function other than as sweetening agent. It is not necessary to show adding an ingredient for the same reason as claimed. It is only needed to show why it would have been obvious to add such ingredient. Furthermore, in view of the teaching of the prior art, one skilled in the art would be motivated to use a combination of glycerin and corn syrup in the Durst baked product to obtain the dual function of the corn syrup serving as a sweetening agent and a humectant.

With respect to the 103 rejection of claims 15-22 and 25-26, applicant make the same argument as above. The argument is not found to be persuasive for the same reason set forth above. With respect to the Rozzano reference, applicant argues the reference does not disclose the use of the container in relation to bread product or that the use of the container extends the shelf life of the food product. Rozzano discloses a container; the selection of the food in the container would have been an obvious matter of choice. As to the container extending the shelf life of the food product, there is nothing in the claims about the container extending the shelf life of the food product. Applicant further argues the reference fails to disclose or suggest using the package under refrigerated conditions. The basis of this argument is not understood because

the claims do not recite anything about using the package under refrigerated conditions. With respect to the Snyder reference, applicant argues the reference does not describe using such container in relation to fully baked bread products. The Snyder reference is only relied upon to show the concept of a food kit containing different type of food products is known in the art and that it would have been obvious to one skilled in the art to package different types of food in the food container of Ronzzano to make a convenient food kit. The comment about storing under refrigerated conditions is not understood because the claims do not require storing under refrigerated conditions.

Applicant's arguments filed Oct. 14, 2003 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Application/Control Number: 10/043,004

Page 5

Art Unit: 1761

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408.

The examiner can normally be reached on Tuesday, Wednesday and Friday

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-0987.

December 30, 2003

Lien Tran
LIEN TRAN
PRIMARY EXAMINER
Group 1700